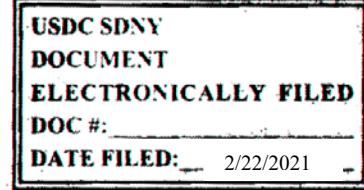


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARBARA PELLICANO,

Plaintiff,

18-CV-04862 (SN)

-against-

ORDER

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

-----X

SARAH NETBURN, United States Magistrate Judge.

On June 1, 2018, the plaintiff filed this action pursuant to 42 U.S.C. § 405(g), seeking review of a denial of social security benefits. On August 2, 2019, the Court approved a stipulation and agreement by the parties remanding the matter for further review by the Commissioner of Social Security. ECF No. 35. On August 14, 2019, the Court approved a stipulation and agreement awarding the plaintiff \$6,550.00 in attorney's fees under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412.

Following the remand, the plaintiff received retroactive benefits from the Social Security Administration. Thereafter, on February 19, 2021, plaintiff's counsel filed a motion for an award of attorney's fees pursuant to 42 U.S.C. § 406(b). Section 406(b) permits the Court to approve "a reasonable fee . . . not in excess of 25 percent of the . . . past-due benefits" awarded to the plaintiff. Gisbrecht v. Barnhart, 535 U.S. 789, 795 (2002) (quoting 42 U.S.C. §406(b)(1)(A)).

Because of the Commissioner's unique role and expertise in this area, the Court orders the Commissioner to respond to the plaintiff's motion. In particular, the Court directs the Commissioner to address the question of whether the fees amount to an impermissible windfall.

See Diberardino v. Commissioner of Social Security, No. 17-cv-02868 (PKC), 2020 WL 6746828 (E.D.N.Y. Nov. 17, 2020).

SO ORDERED.



SARAH NETBURN
United States Magistrate Judge

DATED: New York, New York
February 22, 2021